(3)

No. 97-1217

In The
Supreme Court of the United States
October Term, 1997

STATE OF NEW MEXICO *ex rel.* MANUEL ORTIZ,

Petitioner,

v.

TIMOTHY REED,

Respondent.

On Petition For Writ Of Certiorari To
The Supreme Court Of New Mexico

# BRIEF OF 40 STATES AS *AMICI CURIAE* IN SUPPORT OF PETITIONER, STATE OF NEW MEXICO

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## STATEMENT OF *AMICI* INTEREST

*Amicus* State of Ohio and 39 other *amici* States write to urge the Court to grant the petition of the State of New Mexico. At stake is the essential right of one State to demand the return of a fugitive from justice located in another State.

In this instance, while the executive branches of Ohio, New Mexico and virtually all other States join together in recognizing and supporting the right to reclaim a fugitive from justice, the judicial branch of New Mexico (the asylum State) erected a barrier to extradition by creating an exception to this Court's definition of a "fugitive" under the extradition clause. In doing so, the New Mexico Supreme Court purported to decide issues regarding Ohio's prisons that this Court has long held should be decided by Ohio's courts. Left unreviewed, this novel exception threatens to disrupt an interstate principle of comity that lies at the heart of our federal system of government.

The State of Ohio, as an initial matter, plainly has a strong interest in the resolution of this case. Though not a party, it understandably wishes to see Mr. Reed returned to its jurisdiction. The other *amici* States, as potential demanding States, likewise share an interest in ensuring that State courts throughout the country respect and enforce the requirements of the clause. And, as potential asylum States, the *amici* States also seek clear criteria for meeting their obligations under the clause. Perhaps most importantly, the *amici* States share an interest in maintaining the values of comity and interstate cooperation that Article IV of the United States Constitution embodies.

Extradition claims arise frequently in a federal system of government. In 1997, Ohio made 218 extradition requests from its sister States, and returned 209 prisoners to other States. *See* Appendix. Other States show significant extradition activity as well. In 1997, California had a total of 685 extradition requests

(demands or returns), New York a total of 490, Texas an approximate total of 700, and Pennsylvania a total of 543. *Id.* The requirements of the extradition clause, in short, have frequent application.

## REASONS FOR GRANTING THE WRIT

The petition should be granted for three independent reasons. First, the lower court added two interpretive glosses to the clause unique to extradition jurisprudence. It held that the definition of "fugitive" is subject to a "duress" exception, a holding that is contrary to *Roberts v. Reilly*, 116 U.S. 80 (1885), *Appleyard v. Massachusetts*, 203 U.S. 222 (1906), and their progeny. And it held that an asylum State may rely on its own constitution to sidestep the requirements of the federal clause. Second, these components of the decision threaten markedly to dilute the requirements of the clause and to disfigure enforcement of it. Third, by diverging from U.S. Supreme Court precedent, the decision also creates a split of authority in the lower courts.

### I. THE LOWER COURT MISTAKENLY ADDED TWO UNIQUE EXCEPTIONS TO THE EXTRADITION CLAUSE.

#### A. THE CLAUSE DOES NOT CONTAIN A "DURESS" EXCEPTION.

In case after case, the Court has set forth clear criteria for ascertaining who is a "fugitive" under the extradition clause and who is not. One: was the individual present in the demanding State at the time the crime was committed? Two: is the individual no longer in the demanding State? *Roberts*, 116 U.S. at 95. Once these criteria have been met, that ends the matter. Even if individuals leave the demanding State for some



reason other than to flee justice and even if they remain ignorant of the crime they committed, they nonetheless constitute "fugitives" from justice when found in another State. *Appleyard*, 203 U.S. at 226-27. The only exception to this bright-line rule is where uncontradicted evidence shows that the accused was not in the demanding State at the time he or she committed the crime; for under those circumstances the individual could not possibly have "fled" the demanding State. *Hyatt v. People*, 188 U.S. 691 (1903).

Despite these clear lines and despite decades of precedent honoring them, the New Mexico Supreme Court found that Timothy Reed, the respondent in this case, was not a fugitive. No one disputes that he committed a crime in Ohio. And no one disputes that Ohio found him in New Mexico. In nonetheless concluding that the extradition clause did not require his return to Ohio, the New Mexico Supreme Court looked to Mr. Reed's subjective belief that he would be mistreated in Ohio's prisons and would not be given a hearing by Ohio officials before being returned to prison. Under these circumstances, the court concluded, Reed fled Ohio in "duress" and therefore was not a fugitive.

This sudden exception to the definition of "fugitive" has no jurisprudential pedigree of any kind, and threatens to diminish the strict requirements of the extradition clause. Unlike deportation law, which permits asylum based on a reasonable belief of persecution (*see, e.g., INS v. Elias-Zacarias*, 502 U.S. 478 (1992)), interstate extradition knows no such exception. While an individual resisting deportation may rely on the potential for mistreatment in the foreign country's prison system, an individual resisting extradition to another State may not. Because this Court stands ready to review all claims of prison mistreatment, whether brought in federal or State court, the Constitution does not permit one State to presume that another State has a gulag for a prison system.

Twice before, in fact, the Court has rejected attempts by asylum States to investigate alleged mistreatment in demanding States. In *Sweeney v. Woodall* 344 U.S. 86 (1952), a fugitive from Alabama argued that rendition back to that State would subject him to cruel and unusual punishment. *Id.* at 87. The Court held that Woodall had made no showing that his rights could not be vindicated in the courts of Alabama, and that therefore any alleged hardship was subject to challenge only in the courts of Alabama, and if necessary on review in the United States Supreme Court. *Id.* at 89.

In *Pacileo v. Walker*, 449 U.S. 86 (1980), an escapee from an Arkansas prison was found in California, after which the California governor agreed to return him to Arkansas. Soon thereafter, the Supreme Court of California issued a writ of habeas corpus to conduct hearings into the conditions of the Arkansas prison system. Relying on *Woodall*, the Court reversed: "Once the Governor of [the asylum State] issued the warrant for arrest and rendition in response to the request of the Governor of the [demanding State], claims as to constitutional defects in the [demanding State's] penal system should be heard in the courts of the [demanding State], not those of [the asylum State]." *Id.* at 88 (citation omitted).

Neither *Woodall* nor *Walker*, to be sure, dealt directly with the definition of "fugitive." They instead dealt with a direct attempt by a lower court to investigate allegations of prison mistreatment in another State. Yet from the vantage point of the extradition clause, the two come to the same: Whether the courts of the asylum State seize direct authority to investigate allegations of mistreatment or claim indirect authority to do so by reconfiguring the definition of fugitive, they still arrogate rights they do not have. It is a fixed mark of extradition law that in the first instance such investigations remain the province of the courts in the demanding State and if necessary the province of this Court in ensuring adherence to the United States



Constitution. The New Mexico Supreme Court's contrary conclusion should be reviewed -- and reversed.

### B. THE LOWER COURT IMPERMISSIBLY RELIED ON ITS STATE CONSTITUTION TO JUSTIFY NON-COMPLIANCE WITH THE U.S. CONSTITUTION.

Aside from improperly adding a "duress" gloss to the extradition clause, the lower court mistakenly relied on the New Mexico Constitution for doing so. Under the supremacy clause, the constitution of one of the 50 States simply is not superior to the Constitution of the United States.

The New Mexico Supreme Court left little doubt about the source of its supposed authority to alter federal extradition law. In resolving Mr. Reed's claims that he should not be extradited to Ohio, the court firmly asserted that it would "seek resolution in our own laws and Constitution. * * * The New Mexico Constitution guarantees rights that no law can abrogate." Op. p. 34. Relying on the due process clause of its constitution, which guarantees to all persons life and liberty, as well as the right to "seek[] and obtain[] safety and happiness," the court concluded that "the extradition process was not meant to abrogate the New Mexico Constitution which regards 'seeking and obtaining safety' as a 'natural, inherent and inalienable' right." Op. p. 40. This analysis unabashedly elevates state law over federal law.

And it is plainly wrong. Because the commands of the extradition clause are federal in nature, mandatory and enforceable by federal courts, *Puerto Rico v. Branstad*, 483

U.S. 219 (1987); *Michigan v. Doran*, 439 U.S. 282, 289 (1978), a state court simply cannot ignore them -- even to the well-meaning end of dignifying the State's own constitution. This aspect of the decision separately warrants review.

## II. THE LOWER COURT DECISION THREATENS TO DILUTE STATE RIGHTS UNDER THE EXTRADITION CLAUSE AND THE GOAL OF INTERSTATE COMITY THAT THE CLAUSE EMBRACES.

Left as is, the decision of the New Mexico Supreme Court threatens one of the foundations of the federal system of government established by Article IV of the United States Constitution.

The *amici* States no doubt vigorously support the significance and independent authority of their State constitutions. At the same time, they fully recognize that the United States Constitution places important limits on the States and their constitutions. One such limit is the power to resist extradition.

Article IV embodies the necessary requirements of a compact among the several States on the one hand and between the United States and the States on the other. As one of these requirements, the extradition clause says:

> A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the Executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.



U.S. Const. Art. IV, sec. 2. In implementing the clause, Congress enacted the Extradition Act, 18 U.S.C. §3182 ("Act").

Failure to "deliver[] up" a fugitive "to be removed to the State having Jurisdiction of the Crime" undermines one of the essential policy considerations underlying Article IV. It also destroys a delicate component of the balance of power among the States. As the Court stated over a century ago:

> [T]he statesmen who framed the Constitution were fully sensible, that from the complex character of the Government, it must fail unless the States mutually supported each other and the General Government; and that nothing would be more likely to disturb its peace, and end in discord, than permitting an offender against the laws of a State, by passing over a mathematical line which divides it from another, to defy its process, and stand ready, under the protection of the State, to repeat the offense as soon as another opportunity offered.

*Kentucky v. Dennison*, 65 U.S. (24 How.) 66, 100 (1861).

The clause and the Act, together with decisions from this Court, make clear that extradition is "to be a summary procedure, * * * to be kept within narrow bounds." *California v. Superior Court of California*, 482 U.S. 400, 407 (1987). Once the governor of the asylum State has granted extradition, it serves as *prima facie* evidence that the constitutional and statutory requirements have been met. *Michigan v. Doran*, 439 U.S. 282, 289 (1978). The only inquiry permitted is: "(a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is

a fugitive." *Id.* at 289. These are "historic facts readily verifiable." *Id.* It is settled law that "the commands of the Extradition Clause are mandatory and afford no discretion to the * * * courts of the asylum State." *Puerto Rico v. Branstad*, 483 U.S. 219 (1987).

After finding that the first three of the *Doran* criteria had been met, the New Mexico Supreme Court, rather than treating his fugitive status as an "historical fact readily verifiable," inquired into the reasons for Reed's flight. The reasons for a person's flight from the demanding State are irrelevant to the determination of fugitive status, and therefore cannot be inquired into by state courts. *Appleyard v. Massachusetts*, 203 U.S. 222, 227 (1906). *Appleyard* specified that "it is only necessary that the accused, having been in the demanding state when the crime was committed, thereafter leave that state and be found within the territory of another." *Id.* It follows that any inquiry into other matters is irrelevant, should not have been allowed at hearing, and cannot be relied on by the state supreme court in making an extradition determination.

But the actions of the lower courts go beyond forbidden inquiry. The trial court in New Mexico conducted, and the Supreme Court of New Mexico relied upon, a hearing at which Reed was allowed to present evidence of alleged threats to his safety and life by Ohio prison authorities. The New Mexico Supreme Court noted that this evidence was "unrebutted." However, New Mexico as the asylum State did not have easy access to information needed to rebut such evidence. Ohio was not a party to the case, and therefore had no opportunity to present evidence. Even if it had had such an opportunity, it would have been required at great expense and difficulty to present evidence in a foreign court hundreds of miles from the State. Witnesses, documents, and other evidence would all have had to be transported. Prison and parole personnel would have been taken away from vital tasks at home in order to prove what



should be an "historical fact easily verifiable." Many demanding States, moreover, frequently will not have the resources to engage in this sort of litigation, thereby allowing offenders simply to "pass[]over a mathematical line" to freedom.

Asylum States will suffer as well. If even one state court system develops an "exception" jurisprudence with regard to extradition, it will become a haven for escapees, parole-jumpers and bail-skippers from all over the country. The asylum State's courts will be clogged with fugitives demanding extensive hearings. Those who fit the asylum State's exception, having defied one State's laws with impunity, will be encouraged to repeat their behavior. Even more "disturbing" to interstate peace, States could potentially retaliate against each other for refusing extradition of fugitives from their States.

Worse yet, such a decision in one State will soon be cited as precedent by escapees in other States. Nor is this an idle threat. An escapee who fled to Florida recently cited the decision below in an attempt to escape extradition to Ohio. *See, James M. Douglas v. State of Florida*, No. 97-32215-CICI (Circuit Court, Seventh Judicial Circuit, Volusia County, Dec. 4, 1997)(Order Denying Petition for Writ of Habeas Corpus), *on appeal*, No. 97-3428 (5th District Court of Appeals of Florida)(reproduced in Appendix).

## III. THE NEW MEXICO SUPREME COURT'S DECISION CREATES A CONFLICT IN THE LOWER COURTS.

Not surprisingly, in light of the clear direction from the Court in this area, the New Mexico Supreme Court's decision creates a conflict in the state and lower federal courts. *See, e.g. Coungeris v. Sheahan*, 11 F.3d 726 (7th Cir.1993)(sufficiency of charge should be challenged in demanding State, not asylum State); *Strachan v. Colon*, 941 F.2d 128 (2nd Cir.

1991)(equities should be addressed in demanding State, not asylum State); *Holmes v. Klevenhagen et al.*, 819 S.W. 2d 539 (Tex 1991)(trial judge "was without authority to consider equitable issues during the writ hearing"); *Beckwith v. Evatt*, 819 S.W. 2d 453 (Tenn. Crim App. 1991)(petitioner not allowed to raise violation of his rights by demanding State in extradition hearing); *Strachan v. Colon*, 77 N.Y.2d 499, 571 N.E.2d 65 (1991)(petitioner's due process claim could not be heard in courts of asylum State); *Castriotta v. State*, 111 Nev. 67, 888 P.2d 927 (1995)(district court correctly held that evidence outside of *Doran* criteria should be brought in demanding State's courts); *Nash v. Miller*, 223 Neb. 605, 391 N.W.2d 143(1986)(fugitivity defined as leaving the demanding State after having allegedly committing a crime there). This conflict of authority also supports the writ.



## CONCLUSION

What has long been true should remain true. "[T]he commands of the Extradition Clause are mandatory and afford no discretion to the * * * courts of the asylum State." *Puerto Rico v. Branstad* 483 U.S. 219, 227 (1987). Because the lower court failed to heed this admonition, the 40 *amici* States join New Mexico in urging the Court to grant the writ.

Respectfully submitted,

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Number of Extraditions in 1997 for various States

| State | Requests to other States | Renditions to other States | Total |
|---|---|---|---|
| Alabama | N/A | N/A | 240 |
| Alaska | 11 | 58 | 69 |
| Arizona | 240 | 342 | 582 |
| Arkansas | N/A | N/A | 179 |
| California | N/A | N/A | 685 |
| Connecticut | 214 | N/A | N/A |
| Delaware | 170 | N/A | N/A |
| Florida | N/A | N/A | 1300** |
| Idaho | 84 | 78 | 162 |
| Illinois | 265 | 373 | 638 |
| Iowa | N/A | N/A | 178 |
| Kentucky | N/A | N/A | 323 |
| Louisiana | 149 | 129 | 278 |



| | | | |
|---|---|---|---|
| Maryland | 192 | 57 | 249 |
| Massachsetts | N/A | N/A | 151* |
| Michigan | N/A | N/A | 244 |
| Minnesota | 82 | 155 | 237 |
| Mississippi | N/A | N/A | 212 |
| Montana | 71 | 51 | 122 |
| New Hampshire | 41 | 28 | 69 |
| New Mexico | N/A | N/A | 258* |
| New York | 196 | 294 | 490 |
| North Carolina | 123 | 388 | 511 |
| Ohio | 218 | 209 | 427 |
| Pennsylvania | 189 | 354 | 543 |
| Rhode Island | 172 | 33 | 250 |
| South Carolina | 135 | 22 | 157 |
| South Dakota | 45 | 56 | 101 |
| Tennessee | 130 | 120 | 250 |
| Texas | 200 | 500 | 700** |

| | | | |
|---|---|---|---|
| Utah | 66 | 29 | 95 |
| Vermont | 1 | 26 | 27 |
| Virginia | 279 | 170 | 449 |
| Washington | 172 | 322 | 494 |

* For fiscal year 1997: July 1, 1996-June 30 1997.

** Estimated.



IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR VOLUSIA COUNTY, FLORIDA

CASE NO.: 97-32215-CICI
DIVISION: 32

JAMES M. DOUGLAS,

Petitioner,

vs.

STATE OF FLORIDA,

Petitioner.

_____/

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

This matter came on for consideration on the petition of the petitioner, JAMES M. DOUGLAS, for Writ of Habeas Corpus. The petitioner is currently in custody in Volusia County, having been arrested on a warrant for escape from the prison system of the State of Ohio.

The State of Ohio has issued a Request for Interstate Rendition for James Michael Douglas, who was convicted of the crimes of murder and theft, and was serving a term of incarceration of 15 years to life, when he escaped. The Governor and Secretary of State of Florida on June 24, 1997,

issued a warrant demanding the arrest and securing of Mr. Douglas and the delivery of Mr. Douglas into the custody of agents to be taken back to the State of Ohio from which he fled.

It appears that the requirements of §941.10, *Florida Statutes*, have been appropriately complied with by the State of Florida. It appears further that the principal case law governing the discretion of this Court in dealing with the extradition process is *Michigan v. Doran*, 439 U.S. 282 (1978). That case provides four criteria which may be raised by any person seeking to contest extradition. Those four criteria are:

1. Whether the extradition documents are on their face in order;

2. Whether the petitioner has been charged with a crime in the demanding state;

3. Whether the petitioner is the person named in the request for extradition; and

4. Whether the petitioner is a fugitive.

The petitioner in the present case attacks extradition on the basis of the fourth criterion - that is, he asserts that he is not a fugitive. The basis for that assertion is that he believes that he cannot be treated fairly in the State of Ohio, and that his life would be in danger if he is returned there. In support of his position, the petitioner has provided the Court with a copy of the case of *Reed v. State of New Mexico* ___ SW ___, Docket No.: 22,749 (Supreme Court of New Mexico, Sept. 9, 1997).

While the Court is impressed with the materials supplied by the petitioner with respect to his Petition for Writ of Habeas Corpus, to grant the petition would expand the powers of an asylum state beyond the permissible boundaries established by



the Supremacy Clause of the United States Constitution. It is clear that the United States Supreme Court has minimized the scope of inquiry available to asylum states with respect to the issue of extradition. *California v. Superior Court*, 482 U.S. 400, 402 (1987). Under the guidelines set forth there an asylum state can do no more than decide whether the requirements of the Extradition Act have been met. See also *Michigan v. Doran*, 439 U.S. 282, 289 (1978). Thus, this Court's inquiry must be limited to the existence of a crime charged against a defendant, technical compliance with the required documentation, concurrence of identity between the defendant and the person sought for extradition and fugitivity. It might, perhaps, be appropriate for a federal court to make the inquiry requested by the petitioner, but this Court feels constrained by the constitutional limitations imposed by the Supremacy Clause, and the opinion of the United States Supreme Court cited above.

Accordingly, it is

ORDERED that the petition of the petitioner, JAMES M. DOUGLAS, for Writ of Habeas Corpus be and the same is hereby denied.

DONE AND ORDERED in Chambers, in Daytona Beach, Volusia County, Florida this 4th day of December, 1997.

/s/
DAVID A. MONACO
CIRCUIT JUDGE

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